



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0460]

RIN 1625-AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: By this final rule, the Coast Guard is making non-substantive changes to the final rule that published on March 19, 2020. The final rule became effective on April 20, 2020. However, the amendatory instruction in the rule issued on March 19, 2020 erroneously created a new section rather than amend the section that already existed in the CFR. We are reissuing this final rule with updated amendatory instructions in order to implement the changes that were intended to be implemented by the final rule that published on March 19, 2020.

DATES: This correction is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0460 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
LG	Liquefied Gas
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this rule without prior final rule pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.”

On December 17, 2019, a notice of proposed rulemaking (NPRM) entitled, “Safety Zone; San Juan Harbor, San Juan, PR” was published in the Federal Register under USCG-2019-0460 (84 FR 68860) with a 30 day comment period. The comment period ended on January 16, 2020. No comments were submitted during the NPRMs 30 day comment period. The Coast Guard published a final rule on March 19, 2020, 85 FR 15724, announcing the same changes to 33 CFR 165.754 that this rule implements. The

final rule became effective on April 20, 2020. However, the amendatory instruction in the rule issued on March 19, 2020 erroneously created a new 33 CFR 165.754 rather than amend 33 CFR 165.754 that already existed in the CFR. We are reissuing this final rule with updated amendatory instructions in order to implement the changes that were intended to be implemented by the final rule that published on March 19, 2020. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that correcting the amendatory instructions on a final rulemaking action that had been completed, and published in the Federal Register with a 30 day delayed effective date; therefore, this technical amendment is exempt from notice and comment rulemaking requirements because the only amendment being made is to clarify in the amendatory instructions that existing 33 CFR 165.754 is being “revised” and not being added as a new section to the CFR. This revision is a non-substantive change. This change will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM.

For the same reasons provided in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register under 5 U.S.C. 553(d)(3).

III. Legal Authority, Need for Rule, and Discussion

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Coast Guard published a final rule on March 19, 2020, 85 FR 15724, announcing the same changes to 33 CFR 165.754 that this rule implements. The final rule was supposed to become effective on April 20, 2020. However, the amendatory instruction in the rule issued on March 19, 2020 erroneously created a new 33 CFR 165.764. We are reissuing this final rule; correction document with updated amendatory instructions in order to

implement the changes into the existing 33 CFR 165.754 that were intended by the final rule on March 19, 2020.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). This rule involves a non-substantive change in the amendatory instruction; it will not impose any additional costs on the public. The benefit of the non-substantive change is 33 CFR 165.754 will be revised, and the addition of a second 33 CFR 165.754, which was erroneously added to the the CFR will be removed.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule involves a non-substantive technical amendment. Therefore, this rule is categorically excluded under paragraph L54 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. Paragraph L54 pertains to regulations which are editorial or procedural.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.754 to read as follows:

§ 165.754 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Regulated area.* A moving safety zone is established in the following area:

(1) The waters around liquefied gas (LG) carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W. All coordinates are North American Datum 1983.

(2) The waters around LG carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.

(3) The waters around LG carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W when the vessel gets underway, and continuing until the stern passes the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port (COTP), San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those operating in the safety zone with the COTP's authorization must comply with all lawful orders or directions given to them by the COTP or his designated representative.

(2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF-FM channels 16 and 22A.

(5) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled arrivals and departure of liquefied gas carriers via a Marine Broadcast Notice to Mariners.

(6) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: April 24, 2020

E. P. King,

Captain, U.S. Coast Guard,

Captain of the Port San Juan.

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